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Stacey Kaminer – April 19, 2021

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 MASTER DOCKET 18-MD-2865 (LAK)  
4 CASE NO. 18-CV-09797

5 IN RE:

6 CUSTOMS AND TAX ADMINISTRATION OF  
7 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
8 SCHEME LITIGATION

9  
10  
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY

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13  
14 DEPOSITION OF  
15 STACEY KAMINER  
VOLUME 1

16 Monday, April 19, 2021  
17 8:07 a.m. – 4:46 p.m.

18 Remote Location  
19 Via Huseby Connect  
20 All Parties Remote

21  
22  
23  
24 Stenographically Reported By:  
25 Erica Field, FPR

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1 Markets, Ltd.

2 MR. BLESSINGTON: I should've also made it  
3 clear that Brandon Dillman is also on from K&L  
4 Gates representing Stacey Kaminer.

5 Whereupon,

6 STACEY KAMINER,  
7 having been first duly sworn or affirmed, was examined  
8 and testified as follows:

9 THE WITNESS: Yes.

10 MR. OXFORD: Just before we start, John,  
11 did you want to put a statement on the record  
12 about the protective order.

13 MR. BLESSINGTON: I just want to make sure  
14 that everybody who is actually listening in is  
15 subject to the protective order that's in this  
16 case. Because when we are doing it remotely — I  
17 mean, actually, now that that person has dropped,  
18 we can see everybody's name.

19 But obviously, we are going to be  
20 discussing some confidential information and we  
21 want to make sure it's subject to the protective  
22 order.

23 MR. KAPLAN: This is Marty Kaplan speaking.  
24 For the record, Scott Goldstein may join this and  
25 he obviously is a defendant and subject to the

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1 Q. Are you conducting any business through any  
2 legal entities today, Ms. Kaminer?

3 A. The same as the ones we have already  
4 discussed.

5 Q. Just remind me.

6 A. Kamco LP, as an example. I have my own  
7 entities that I conduct business in.

8 Q. Are any of those entities involved in  
9 dividend arbitrage trading?

10 A. No.

11 Q. Let's go back to Acer.  
12 What's the ownership interest in Acer  
13 today?

14 A. There's Class A shares that are -- or  
15 members, I should say, that is 50/50 Bob Crema and  
16 Stacey Kaminer. And there's Class B shares that's  
17 100 percent Pact Investors, Inc.

18 Q. Okay. We'll get to Pact in a -- in a  
19 moment.

20 Can you describe for us, please, your role  
21 at Acer in the time period, 2012 through 2015?

22 A. I was one of the managing members during  
23 that time. My role would have been -- sorry.

24 Q. Sorry. On you go.

25 A. My role would have been to handle the --

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1 the administrative stuff, the business with -- as an  
2 example, ED&F. It was basically many paths, from talking  
3 with attorneys, talking -- getting tax advice, regulatory  
4 advice. Extensive in terms of the different things I  
5 would do, but not necessarily the only person making  
6 decisions.

7 Q. I forgot to ask you a question a few  
8 moments ago about Acer's broker dealer registration.

9 Why did you consider that Acer needed to be  
10 registered as a broker dealer prior to 2017?

11 A. It had a lot to do with legal advice that  
12 we had gotten and the type of finder business that we  
13 were doing and what was going on with the -- what we  
14 deemed, generally speaking, clients, the pension plans,  
15 the charities.

16 Q. Okay. So without seeking to invade upon  
17 the attorney-client privilege, is there anything you can  
18 tell me about -- further than that about the -- the  
19 reason why Acer considered it needed to be registered as  
20 a broker dealer?

21 MR. BLESSINGTON: Object as to form.

22 And I just caution you not to disclose  
23 any -- the substance of any conversations you had  
24 with your lawyers.

25 A. Sorry, I'm scrolling through the

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1 conversations to try and pick out an answer for you that  
2 does not involve conversations with -- confidential  
3 conversation with our lawyers. And I -- I think the  
4 answer I gave, generally, would be the one I would give  
5 again because that would not impact the confidential  
6 conversations I had.

7 BY MR. OXFORD:

8 Q. Back to Acer and your role in 2012 through  
9 2015.

10 Did you have any role in the -- the trading  
11 side of Acer's business?

12 A. I was the head trader at Acer.

13 Q. That's clear. What was your role as a head  
14 trader?

15 A. If Acer did any proprietary trading, I was  
16 in charge of effecting that trading.

17 Q. And did Acer do any proprietary trading in  
18 2012 through 2015?

19 A. I'm not sure if by then we did any  
20 proprietary trading. Probably toward -- in the beginning  
21 of 2012.

22 Q. Okay. And separate from the -- withdrawn.

23 What proprietary trading did Acer do in  
24 2012? Would that be the -- the DRIPs trading that  
25 Mr. Crema told us about?

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1 A. Yes.

2 Q. Anything else?

3 A. There might have been, but not to my  
4 recollection, as I'm sitting here right now.

5 Q. Focusing on the Danish dividend arbitrage  
6 trading that was conducted by the Acer plans, what was  
7 your role in connection with that trading?

8 A. I would definitely be the person that ED&F  
9 reached out to regarding the trading or someone that I  
10 designated, but I was still monitoring all of the  
11 transactions.

12 Q. And as head trader, were you involved in  
13 designing the trades that the Acer plans entered into?

14 MR. BLESSINGTON: Object as to form.

15 You may answer.

16 A. Could you be more specific? Is there a  
17 particular jurisdiction you're asking about?

18 BY MR. OXFORD:

19 Q. Okay. Denmark.

20 A. No.

21 Q. Who was involved in designing the trades  
22 that the Acer plans conducted in Denmark?

23 A. Those trades didn't really differ from what  
24 had been used in other jurisdictions in the past. So I  
25 don't know that I would characterize anybody as having

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1 designed the specific Danish structure.

2 Q. To -- is it fair to say that you took the  
3 dividend arbitrage structures used in other countries and  
4 applied that to Denmark, generally?

5 MR. BLESSINGTON: Object as to form.

6 You may answer.

7 A. Yes.

8 BY MR. OXFORD:

9 Q. Were you involved as head trader in picking  
10 the securities -- the Danish securities that the Acer  
11 plans would trade in?

12 A. I was involved in the process of making --  
13 of helping figure out -- doing the due diligence on that,  
14 I think is the best way to say.

15 Q. Okay. Can you describe the due diligence?

16 A. For us, it -- it would have to do with what  
17 was the dividend, what would the yield be, what kind of  
18 corporate information did Bloomberg have, what was the  
19 security identifier and the like?

20 Q. Who else was involved in this due  
21 diligence?

22 A. Are you asking on the Acer side?

23 Q. Just generally, Acer, anybody else.

24 A. I couldn't --

25 MR. BINDER: Objection to form.

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1       been over your Danish list.

2                       What does that mean?

3               A.     It means she would have sent me a list of  
4       securities that they felt they could provide funding for  
5       and, potentially, provide liquidity for.

6               Q.     And what did you and Mr. Crema discuss  
7       about that list?

8               A.     I don't recall the exact conversation we  
9       had about that list.

10              Q.     Okay. And generally, your process would be  
11       what?

12              A.     In general, we would've discussed what was  
13       the dividend on those securities, what was the general  
14       market on those securities, what did we think the profit  
15       was going to be that the plan would make, stuff akin to  
16       that.

17              Q.     Okay. Let's pause there.

18                      How did you calculate what profit the plan  
19       would make?

20              A.     It was partially based on, like I said,  
21       what the — so when I say something like, the market,  
22       what I'm referring to in this instance is the fact that  
23       just even just entering into the transaction at all,  
24       buying the security and selling the hedge, has a market  
25       cost. It's usually expressed as an all-in or a



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1 percentage of the dividend.

2 So whereas in Denmark, 73 percent is the  
3 underlying dividend entitlement. The market for  
4 something might be 80, 84, 92. And, therefore, you know  
5 that once you pay that away to the market, then there are  
6 certain other knowable costs, such as the execution costs  
7 of even doing this transaction, and that the financing  
8 costs that would be associated with getting the leverage  
9 or funding.

10 And when you then add in all those costs,  
11 you arrive at the gross profit that the pension would  
12 make.

13 Q. And would Acer get a percentage of that  
14 gross profit?

15 A. ED&F would charge their fee. After that  
16 gross profit, Acer would charge ED&F a fee.

17 Q. Were those fees based on a percentage of  
18 that gross profit you just described?

19 A. As we discussed earlier, they were based on  
20 other factors, but expressed as a percentage -- ED&F's  
21 fee was expressed as a percentage.

22 Q. And generally, what was ED&F's fee as a  
23 percentage of the gross profit you've just described?

24 MR. BINDER: Objection to form.

25 MR. BLESSINGTON: Objection.

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1                   You may answer.

2                   A.     90 to 95 percent.

3       BY MR. OXFORD:

4                   Q.     And what percentage of that 90 to  
5       95 percent would go to Acer?

6                   A.     50 percent, approximately.

7                   Q.     And that leaves the plan with what?

8                   A.     5 to 10 percent.

9                   Q.     So your intimate group of friend -- friends  
10       and family who have these plans get 5 to 10 percent of  
11       the profit, and Acer and ED&F Man split 90 to 95 percent  
12       of the profit; is that right?

13                  MR. BINDER: Objection to form.

14                  A.     Yes. Actually, I would add onto that. By  
15       virtue of their ownership in Acer, those plans end up  
16       making part of what Acer makes.

17       BY MR. OXFORD:

18                  Q.     Through the Pact Agreement?

19                  A.     Correct.

20                  Q.     Right. We'll come back to that.

21                  Okay. So you and Mr. Crema identify from  
22       Ms. Foster's list, the shares that you would like to  
23       trade in sort of round numbers; is that fair?

24                  A.     Can you say it again? I apologize.

25                  Q.     Withdrawn. I -- I apologize. I'll -- I'll

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1 A. No.

2 MR. BLESSINGTON: Objection.

3 You may answer.

4 A. No. I actually did not say that that  
5 involved the Acer plans at all.

6 BY MR. OXFORD:

7 Q. I see. Maybe I misunderstood your  
8 testimony. Okay. So let's try and do this in a clean  
9 way.

10 Is the agreement reflected in your  
11 March 4th e-mail to Ms. -- to Ms. Foster that ED&F's  
12 profit on the Acer plans Danish trading would be split  
13 50/50 between Acer and ED&F Man?

14 A. Yes.

15 Q. And you told us earlier, did you not, that  
16 ED&F Man's profit on the Acer plan dividends trading in  
17 Denmark were almost 95 percent of the profit after the  
18 fees had been taken off?

19 MR. BINDER: Objection to form.

20 MR. BLESSINGTON: Object as to form.

21 You may answer.

22 A. I think I specifically said that ED&F's fee  
23 that they charged equated to 90 to 95 percent.

24 BY MR. OXFORD:

25 Q. 90 to 95 percent of the profit on the

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1 BY MR. OXFORD:

2 Q. From a capital allocation perspective, does  
3 it matter which country the securities are issued in?

4 A. I couldn't attest to whether that mattered  
5 on ED&F's side or not.

6 Q. Okay. Did ED&F need to allocate capital in  
7 order to facilitate the Acer plans Danish securities  
8 purchases?

9 MR. BINDER: Objection to form.

10 A. They would have needed to arrange funding,  
11 yes.

12 BY MR. OXFORD:

13 Q. Okay. There's a reference here to  
14 Ms. Foster saying: You were going to send over a  
15 trade -- a trade diagram.

16 Do you see that?

17 A. Yes.

18 Q. Why is Ms. Foster asking you for a trade  
19 diagram?

20 A. We just looked at the one I sent them.

21 Q. Okay. I understand.

22 Did you put together an indicative trade  
23 schedule as requested by Ms. Foster?

24 A. I can't tell from this e-mail, but I don't  
25 see why I wouldn't have.

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1 Q. Okay. That's all I have for this document,  
2 thanks.

3 Can you open up please 2489?

4 A. We have it open.

5 Q. So this goes back to the original  
6 discussions with ED&F in 2012. Can you turn to Page 2 of  
7 the e-mails, and to the bottom of the second page, the  
8 18 July 2012 e-mail from Ms. Foster to you.

9 Do you have it?

10 A. Yes.

11 Q. Okay. She says in the second paragraph:  
12 I'm not sure if we've been through funding cost with you.

13 And then she explains what the funding  
14 costs would be. And she says: We need 72 hours to get  
15 funding in place from our group treasury and once we have  
16 committed to that, we are charges. It's at EURIBOR plus  
17 4.75.

18 Do you see that?

19 A. Yes.

20 Q. And is -- is that the charge that the  
21 internal desk at ED&F Man is charged for funding the  
22 trading on behalf of the Acer plans?

23 MR. BINDER: Objection to form. Lacks  
24 foundation.

25 MR. BLESSINGTON: Objection.

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1           A.     I take that to mean that that is what they  
2     get charged by their treasury.

3     BY MR. OXFORD:

4           Q.     And they passed that charge on to the Acer  
5     plans, correct?

6                     MR. BINDER: Objection to form.

7           A.     Yes.

8     BY MR. OXFORD:

9           Q.     And they go in to say: Marcus can walk you  
10    through any custodian fees.

11                    Did Marcus walk you through any custodian  
12    fees?

13           A.     I can't recall specific a conversation  
14    about it. But I would think if she said he was going to,  
15    that that happened.

16           Q.     She goes on to say: We would propose you  
17    fund the account with some money, i.e., any capital risk  
18    plus some to cover the percentage of the initial margin.

19                    Do you see that?

20           A.     Yes.

21           Q.     Why was only some of the initial margin  
22    being funded by the plans?

23                    MR. BINDER: Objection to form.

24           A.     I would put this in context of them talking  
25    about, as they did above futures. And with regards to

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 MASTER DOCKET 18-MD-2865 (LAK)  
4 CASE NO. 18-CV-09797

5 IN RE:

6 CUSTOMS AND TAX ADMINISTRATION OF  
7 THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
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14 DEPOSITION OF  
15 STACEY KAMINER  
VOLUME 2

16 Tuesday, April 20, 2021  
17 8:08 a.m. – 2:35 p.m.

18 Remote Location  
19 Via Huseby Connect  
20 All Parties Remote

21  
22  
23  
24 Stenographically Reported By:  
25 Erica Field, FPR

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1       Thereupon,  
2       the following proceedings began at 8:08 a.m. :

3                   THE VIDEOGRAPHER: We are back on the  
4                   record. This begins Day 2, Volume II of the video  
5                   deposition of Stacey Kaminer. The time is  
6                   8:08 a.m., April 20, 2021.

7                   Will the court reporter please administer  
8                   the oath.

9       Whereupon,  
10                   STACEY KAMINER,  
11       having been first duly sworn or affirmed, was examined  
12       and testified as follows:

13                   THE WITNESS: I do.

14                   MR. BINDER: Before you begin your  
15                   questioning, I just wanted to follow up on a  
16                   statement I made on the record yesterday.

17                   During your questioning of Ms. Kaminer, you  
18                   stated that, quote, ED&F's counsel had represent  
19                   ed to us that there was no recording that they  
20                   have of your placing an order orally for the  
21                   shares prior to the 20th of November, closed  
22                   quote.

23                   So at the time I stated that as current  
24                   counsel for ED&F in this matter, I was unaware of  
25                   such representation. So since the end of the



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1 Q. The title is: Dividend Finder Fee Billing  
2 for Danske Bank, Novozymes and Pandora?

3 A. Yes.

4 Q. And he writes: Hi, Marcus/Chris, attached  
5 is the Acer group LLC billing for those three shares,  
6 correct?

7 A. Yes.

8 Q. What was Acer invoicing ED&F for here?

9 A. Our fees.

10 Q. What were your fees based on?  
11 What did you do to earn those fees?

12 A. I believe I stated yesterday that ED&F paid  
13 us based on our relationship, based on overall value that  
14 we brought to the table, based on the instances when we  
15 did locate stock, and that our dividend finder fee didn't  
16 just cover locating, sourcing, whatever word you want to  
17 use for the term stock, and they did not separate out  
18 well, this is Belgium, this is Canada, this is Denmark.  
19 They viewed us as a relationship in the whole.

20 Q. The one thing that we can be sure is, is  
21 that Acer services for Denmark did not include finding  
22 any dividends.

23 We can agree on that?

24 A. We can agree that Acer services for Denmark  
25 did not include locating stock that ultimately got

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1 delivered to ED&F.

2 Q. And that's what you described yesterday at  
3 your dividend finder fee business?

4 A. No, it isn't.

5 MR. BLESSINGTON: Objection.

6 A. No, it isn't. I described that as a  
7 component or part of our dividend finder fee business.

8 BY MR. OXFORD:

9 Q. So tell me, how are those numbers  
10 calculated in the invoice?

11 A. Which number specifically are you referring  
12 to, please?

13 Q. All of the numbers, actually. Let's look  
14 at Pan -- let's look at -- particularly at the Pandora  
15 numbers here on the invoice. So there's 7,950 [sic]  
16 shares.

17 MR. BINDER: Objection.

18 BY MR. OXFORD:

19 Q. That's the number of shares that were sold  
20 to the Acer plans, correct?

21 A. 700,950, correct.

22 Q. Yep. And the fee wasn't calculated on  
23 any -- any dividends that Acer had sourced, correct?

24 A. Acer doesn't source a dividend. They  
25 would --

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1 Q. Acer doesn't source stock?

2 THE STENOGRAPHER: I'm sorry. The answer  
3 again?

4 A. Acer doesn't source dividends. They would  
5 have sourced or located a stock in --

6 Q. But they didn't source or locate the stocks  
7 that is referenced on this e-mail, this Pandora stock,  
8 did they?

9 A. No, they did not.

10 Q. And they didn't actually locate any of the  
11 other stocks that are listed on this invoice or any other  
12 invoice that Acer sent ED&F in connection with Danish  
13 dividend arbitrage trading?

14 A. That's correct.

15 Q. And that fee is based on the 50 percent  
16 share of ED&F Man's fee as you testified yesterday,  
17 correct?

18 A. Yes.

19 Q. And the rest of the numbers there are just  
20 made up to make it look like there's an actual dividend  
21 finders fee calculated based on individual stocks?

22 MR. BLESSINGTON: Objection. You can  
23 answer.

24 A. No.

25

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1 average, the all-in, which we discussed earlier that gets  
2 paid out to what I deemed the market, or is sort of the  
3 cost initially in buying the stock and entering into the  
4 hedge and is in the range of 89 percent all-in. If we  
5 use that number and -- therefore the remainder of the  
6 reclaim that gets held as a gross profit by the pensions  
7 is equal to approximately 11 percent of the dividend,  
8 which would therefore equate to little less than half,  
9 maybe 40 percent of the reclaim, reclaim being  
10 27 percent, so my math could be off on the percentage.

11 Q. Either your math is off or mine. It  
12 wouldn't be the first time, at least on my part.

13 Are you suggesting that the plans -- the  
14 Acer plans retained about 40 percent of the reclaim that  
15 Denmark paid to the Acer plans, 40 percent of the 18  
16 million?

17 A. On a gross profit basis, yes. If I  
18 interpreted the question incorrectly, I apologize.

19 Q. Well, let me ask it a different way.

20 How much in terms of dollars and cents at  
21 the end of the day, of the 18 million, was actually  
22 retained by the Acer plans after ED&F had been paid their  
23 fees, after Acer had been paid their fees, after all the  
24 other expenses that we've talked about at length?

25 A. Acer did not get paid fees by the pension

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1 every trade, there wasn't a detailed reconciliation  
2 informed and ultimately agreed between Mr. Goldman on  
3 behalf of Acer and so the Acer plans and ED&F?

4 A. No.

5 Q. Your testimony is that such a detailed  
6 reconciliation did not happen on each occasion?

7 A. You asked me -- you said -- I maybe  
8 misinterpreted. I thought you said in your question that  
9 it was my testimony that it did not happen in every case  
10 and I am saying no, that's not my testimony.

11 Q. Okay. Let me try to clean it up.

12 Do we agree that Acer and ED&F Man  
13 conducted a detailed reconciliation on all of the costs,  
14 including the financing costs, on each trade involving  
15 Danish securities?

16 MR. BINDER: Objection to form.

17 A. Yes. But that not all of the same  
18 information was necessary in every reconciliation.

19 BY MR. OXFORD:

20 Q. So, for example, Acer would need to know  
21 the dates on which shares were borrowed by ED&F Man in  
22 order to ensure -- withdrawn.

23 So in the case where ED&F Man covers its  
24 short sale to the plan by borrowing shares, Acer -- in  
25 order to do the reconciliation that you have just agreed

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1       happened on every occasion, Acer would need detailed  
2       information about the stock lending transactions  
3       including the number of days over which the interest  
4       should be charged, and with that comes the day ED&F  
5       borrowed the stock and day that ED&F unwound the stock?

6               MR. BINDER: Objection to form.

7               A.       So there wouldn't be an instance that --  
8       actually, it doesn't matter.

9               If there was an instance where we were  
10       trying to track the financing with regard to money laid  
11       out for three days, whether it was for a borrow or not,  
12       we would need to know the amount of money and the rate.  
13       But we generally knew the rate in advance, as in there  
14       was an e-mail that we had gotten and if that changed,  
15       then we were apprised of it, of what the rate of funding  
16       was that they charged and it was pegged to the Euribor  
17       and we could look that up.

18              If when we calculated that out, let's say  
19       we were in our reconciliation within a hundred dollars --  
20       not saying this was what happened but by way of  
21       example -- a hundred dollars of what they were saying,  
22       would there be a need for Alan to pursue really in-depth  
23       more detailed figures from ED&F, no.

24              If we -- if the -- if the optics we put  
25       together matched what they were saying, then if they

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1 didn't, then yes.

2 BY MR. OXFORD:

3 Q. Can you pull up Exhibit 2492? I think we  
4 looked at this yesterday.

5 MR. BLESSINGTON: Do you want the  
6 spreadsheet, Neil, or just the e-mail?

7 MR. OXFORD: Just the attachment, actually.  
8 Just the cover e-mail actually, John.

9 A. We have it open.

10 BY MR. OXFORD:

11 Q. We looked at this yesterday, didn't we?

12 A. Yes.

13 Q. I know it's been a long day or so.

14 This is an example, is it not, of  
15 Mr. Goldman going over financing costs that ED&F is  
16 charging to the Acer plans with a fine-tooth comb and  
17 finding some that are larger than expected?

18 A. This would be an example of Alan being — I  
19 don't think he was ever not thorough, and it's just there  
20 wasn't always reason to dive deeper.

21 Q. Okay. Just back to the stock lending  
22 example. If Alan is being thorough, and the Acer plans  
23 are being charged daily interest rates for facilitating  
24 stock lending transactions, whether to purchase or unwind  
25 the purchase of Danish shares, then he would need to know